

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

18 Following the final pretrial conference, the Court has given additional thought to the
19 trial and the relatively poorly prepared state of this case. The Court has decided that the
20 parties should file pretrial memoranda, not to exceed 12 pages per side. The memoranda
21 should be filed on or before the close of business on **January 9, 2009**. The memoranda shall
22 address the following issues

1. Patent Infringement.

24 The parties shall each specify the patent claims they believe to be at issue in this case
25 and their understanding of the meaning of those claims. Midwest shall specify the claims it
26 believes to be infringed by Soilworks' product. The parties shall further provide any briefing
27 they believe will help the Court manage the patent infringement claim, including issues that
28 might arise during the trial, evidentiary problems, and legal principles. Each side shall also

1 address the precise issues they believe the jury must decide as part of the patent infringement
2 claim.

3 2. Court Issues and Jury Issues.

4 Each party shall identify the issues it believes must be resolved by the Court and those
5 that must be resolved by the jury. The parties shall propose a procedure by which these
6 issues can be resolved during trial.

7 3. Jury Verdict Form.

8 In light of the discussion at the final pretrial conference, the parties shall jointly
9 prepare a proposed jury verdict form. The form shall be submitted to the Court by the close
10 of business on **January 9, 2009**, and shall clearly identify each issue to be decided by the
11 jury.

12 4. Preliminary Jury Instructions.

13 The Court is concerned about jury confusion in this case. The parties shall jointly
14 prepare a concise preliminary jury instruction that specifies the issues the jury will be
15 required to decide during the case. The purpose of this instruction will be to enable the jury
16 to understand the issues it must consider as it goes through the trial. The proposed
17 instruction shall be submitted to the Court by the close of business on **January 9, 2009**.

18 5. Injunctive Relief.

19 The parties shall address when and how the Court should consider and decide
20 questions concerning injunctive relief, including the specific injunctive relief issues to be
21 resolved.

22 6. Attorneys' Fees.

23 The parties shall address when and how attorneys' fees should be resolved in this
24 case, and the standards by which they should be decided. In addition, the parties should
25 address whether the Court or a jury decides if this is an exceptional case for purposes of
26 attorneys' fees.

27 The matters addressed in these memoranda will be considered during the final
28 conference to be held on **January 15, 2009**. The conference shall begin at 4:00 p.m., rather

1 than at 4:30 p.m. as stated by the Court during the final pretrial conference.

2 DATED this 16th day of October, 2008.

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6 David G. Campbell
7 United States District Judge
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